



**SOUHEGAN WATER MANAGEMENT PLANNING
AREA COMMITTEE**

NH Rivers Management and Protection Program

New Hampshire Department of Environmental Services

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Souhegan Water Management Planning Area Committee Meeting

March 5, 2004

Milford Town Hall

Selectmen's Meeting Room

1:00 pm – 3:00 pm

Members Present:

Spencer C. Brookes II
Peter de Bruyn Kops
Jay Crystal
Nelson Disco
Diane Fitzpatrick
Vincent Gerbino
Gordon Leddy
Lawrence Major
George May
Thomas Neforas
Timothy O'Connell
Angela Rapp
Nancy Rose Redling
Pierce Rigrod
William F. Ruoff
Robin Warren

Members Absent:

Bruno, Pierre W,
Stephen J. Densberger
Andrew R. Peterson

Others Present:

Jason George, Gomez and Sullivan

DES Staff Present – Watershed Management Bureau:

Steve Couture, Rivers Coordinator
Wayne Ives, Instream Flow Specialist
Paul Currier, Administrator
Marie Loskamp, Executive Secretary

Introductions and Certification of Members

Members signed and had their certificates notarized as they arrived before the meeting officially started.

All attendees introduced themselves.

Wayne Ives described the contents of the notebooks that were passed out. Wayne requested that all members check to see if their contact information and e-mail address is correct and if the

information is incorrect, please advise him. All documents for your review will be posted on our web site.

Paul Currier thanked everyone for being a part of this process and passed around a one page handout with tentative timeline. I will be giving an overview of the process, the history and how we got to where we are, then we will elect a chair and vice chair, (DES will provide administrative support and staff), and the committee will select two members from the committee to be part of the contractor selection team that will participate in reviewing qualifications and experience and interviewing a contractor and helping in the selection process.

**Presentation: Souhegan River Instream Flow Pilot Program
Discussion of Pilot Program and Duties of the WMPAAC
Tentative Project Timeline – Paul Currier**

Paul covered general concepts, history and summary of the program and specific information on the Souhegan that we have at this point, and how the process works for the protected instream flow study and the water management plan and the role of the dual advisory committees in that process.

The general concept is that uses of the river depend on flow and those uses we tend to think of in terms of aquatic life, boating, swimming and fishing. Those are the major ones, but there are others. In general, the river eco system is adapted to "natural hydrograph characteristics". The way the hydrograph has been since the glacier left and the landscape matured. The life cycles of aquatic organisms have adapted to that more or less natural hydrograph. Impacts of human activity on the landscape, including both consumptive use of water changes in the landscape and construction and operation of dams can all modify the hydrograph from a natural condition, a condition that would exist if mankind were not here, which is why we are concerned for protected flows. We would like to maintain as close to natural characteristics as possible while accommodating the human uses.

These are two common law ideas that come from Great Britain and have been incorporated into jurisprudence in the states and in New Hampshire in particular. Common law is law that is not in any statute or RSA but is concepts that basically are developed through court cases all the way from a long time ago in Britain under the British crown on to more modern times. There are two of them, one is the riparian rights doctrine which basically says that any owner of streamside property and anybody that has frontage on a river has the right to reasonable use of the water in that river or stream. Reasonable use means that any riparian owner can take all the water they want as long as they do not unreasonably restrict the use of that water by any other riparian owner and as long as they do not infringe on the public trust uses of the river. Public trust uses (another common law doctrine) which basically says the state holds in a public trust certain instream uses for the common good and for the general use of all. Again those have been developed through court decisions over time. They include fishing, biological integrity, aquatic life support, swimming, and boating.

Specific history of the development of instream flow protection ideas in New Hampshire. The Rivers Management Protection program was enacted by the Legislature in 1988. That is a process where legislative designation of certain rivers, the Souhegan River is one, (there are now 14 designated rivers) is based on local initiative and a specified process for a group of people with broad local support to bring a proposal to the legislature to designate rivers or reaches of rivers. Provisions for Instream Flow Protection were added to that statute in 1990 and the first rivers were designated into this program also in 1990. The Instream Flow provisions of the statute, RSA 483:9, this is the essential language, "*basically provide that the Commissioner of DES shall adopt rules specifying the standards criteria and procedures by which a protected instream flow shall be established and enforced for each designated river or segment.*" So that is the process that DES is directed by the legislature to do and furthermore there is a provision where it said that once

that is done, once DES has established protected instream flows, the protected instream flow levels established under this section shall be maintained at all times except when inflow is less than the protected instream flow level as a result of natural causes. That is the task at hand and those are the legislative words that specify what needs to be done.

The development of instream flow rules has had a long history beginning in 1990 with a number of public drafts and advisory committee. First draft came out in 1994 and there was a draft in 1996 which almost got to rule making stage. Under that concept, which was a standard setting process that would have been statewide, there were trigger flows by season at specified flow duration intervals. If you followed that process, you might have heard things like the seasonal Q90, the seasonal Q80 and the seasonal Q60. This proposal included a successive turn down of consumptive water use by affected water users who were adjacent to the designated river segments. Ultimately there was not enough agreement among the stakeholders in 1996 to go forward with rule making on that and work stopped.

Work started again in 1998 and that is about when I became involved with. Basically it picked up where we stopped in 1996 with a concept of trigger flows and a statewide process that would involve turn down and ultimately cessation of the use of river water by water users based on what the hydrograph was doing, what the river was doing. Using some estimating tools, costs estimate basis provided by Loon Mountain, we basically estimated that to implement this would cost affected water users in aggregate about \$50m on a statewide basis. That concept was turned down—that which was based on trigger flows--stopped at that point largely as a result of the cost estimate. We continued to work with stakeholders and in the 3rd round one of the things in the testimony that we heard on the version associated with the \$50m estimate was that this process should involve the whole upstream watershed, that protective flow should not just fall to the water users that are adjacent to designated rivers and that dam owners, the management of impoundments in the watershed should be an integral factor in the process. Individual water users should not be responsible on their own for storing enough water to get them by low flow periods or finding an alternate source of water during low flow periods. The whole watershed should be managed so that water use can continue, dams are operated for their purposes but maybe there is some flexibility there and the instream uses can be protected as well. The other thing that came out of the hearings for that version was that a statewide one size fits all was inappropriate. We got lots of testimony that protective flows should be designed for the specifics of each individual river. Rivers are not all the same. You can categorize the uses that you might want to protect. Generally you have to apply them to the specifics of a particular river and its watershed setting and its hydrograph conditions. So we went forward with those ideas and developed a 3rd round of rule making and at this point I want to say that this process has gone on a long time. This is in no way a complete list, but there are a whole bunch of people that put a lot of time into round 1, round 2, and round 3 and working with us to develop those concepts. These are people that put in lots of time and energy, and some who will continue to put in lots of time and we are grateful for that.

At that point the legislature stepped in as there was great concern that DES would create a regulatory process that did not include all the concerns of the water users if they were not closely enough observed by the legislature. The legislature should have an opportunity to stop the process if the legislature felt that DES was not proceeding appropriately and to review the process every step of the way. So that is where the pilot program idea came from and the legislature enacted the pilot program law, which basically took those concepts in round 3 that we had developed and incorporated some of them into law, the ones where the legislature felt legislative oversight and control was beneficial and directed DES to put the rest into rules. The main idea of the pilot program is to provide an administrative framework for applying those common law doctrines, the riparian doctrine and public trust doctrine. Also to create river specific protective flows that implements the public trust doctrine and part of that to be put into a water management plan to implement the riparian doctrine part of that. The idea is that protect instream flows would be established after a detailed examination of the uses of the river that are

to be protected and their associated flows, and then a water management plan would be put into place basically as a result of negotiations amongst the affected water users, dam owners facilitated by DES and its contractors in order to figure out how to manage water use and dam operation in the watershed to obtain the protect flow. So that is the basic idea we had worked out in previous rule making discussions along the way. There was a lot of discussion about what withdrawals should be included in the process, where does the boundary away from the river in which affected water users are dispersed. The general consensus was that 500 feet was an appropriate distance away from a river or any tributary with the understanding that water users that use wells within that 500 feet there would be a consideration of a process for estimating how much water the well extracted from the stream itself and then taking that information into account in the Water Management Plan.

Funding for the Souhegan Pilot Project was included in the fiscal FY04 budget. That funding does not include administrative costs, basically we were able to find federal clean water act funding for DES staff to accomplish the administrative part of the pilot project and the Legislature appropriated \$355,000 which would be the amount to be spent a contractor to produce the studies necessary to get the protected instream flows and the water management plan done. The acronym is IPUOCR. You will become very familiar with instream protected uses, and those are enumerated in the statute. Outstanding characteristics and resources, those are the items that are intended to be protected according to the statute by the instream flow that get established under this process. There is a matrix in here that Wayne mentioned. There is a lot of overlap between various items in each one of these and including lots of overlap with designated uses in the Clean Water Act, but those are also specified as being applicable. The rules that we came up, as directed by the legislature, apply to designated river and the upstream watershed. In the case of the Souhegan, the entire river in NH is designated, so it doesn't have a big upstream watershed that is not associated with the designated reach. There will be a protected instream flow study followed by a water management plan. Another provision of the rules that was worked out previously is that there never would be a situation in which water users were not allowed to withdraw any water from the river. The de minimis amount at any point on the river would be 5% of 7Q10 would always be available for water users no matter what the flow in the river was. The idea being that amount of water could be taken even if the river sucked dry. The process involves lots of public input both through the advisory committees and through public comment process.

Definitions:

Affected Water Users – are ones that are required to be registered with the department and report their water use and that is basically waters users that use more than 20,000 gallons a day for more than 7 consecutive days. There is some additional stuff but that is basically it and located within 500 feet of a designated river or tributary.

Affected Dam Owners – are dam owners whose dams impound greater than 10 acres. All of these are in your notebook.

Under the Rivers Management Protection Program (RMPP) there are various categories of designated river, which include rural, rural community, community and natural segments. The Souhegan has no natural segments but it does have some segments in the other categories. One of the reasons the Souhegan was picked for the pilot was that it has a good mix of dams and water use types. So if we can do this process successfully on the Souhegan it should provide a good test case.

A list of the water users. The map shows how they are scattered throughout the watershed and the dam owners, DES owns a substantial number of dams in the watershed and where the dams are scattered throughout the watershed.

Other useful information – a number of water quality monitoring stations that are sampled by DES or by volunteers that cooperate with us. There is one real time gauge on the Souhegan down near the mouth which will be very useful. Basically, the first thing that needs to happen is the Instream flow study which identifies all those IPUOCR entities, the instream uses, evaluates the flow needs and then documents that flow result in a study that would be available for public comment. Ultimately the flows would be established by the department in a formal action once there has been public comment.

We are going to hire a contractor to do that with part of the \$355,000 and we intend to hire one contractor for both studies, for both the protected instream flow study and the water management plan. We have received statements of qualification, and virtually all the “contractors” are of consortiums of organizations with the various skills necessary to accomplish the studies.

The first thing will be to research the literature, what are the uses, characteristics, resources that are to be protected, where are they, and how do they relate to stream flow. They will basically be the background research from existing documents and from possibly interviews. Then this summer we hope there will be an on stream survey which will verify the locations of those, document and the specifics of each one of those. Then concurrent with that the contractor will identify appropriate methodologies for estimating protective flows, flows that would protect those uses, characteristics and resources that have been identified, and then the contractor would present that in a draft which would go before this committee, the Technical Review Committee, which is your companion committee and then once there had been interaction with the committees ultimately a public hearing resulting in changes to a final document.

Following on that, some of the activities leading to the water management plan, we think we will begin concurrently with the protected instream flow study, but the idea of a water management plan is really three sub-plans combined into one document. Those are water conservation plan, dam management plan and a water use plan. The water conservation plan and the water use plan applied to affected water users. They would respectively describe specifically for each water user conservation measures that would be put into place by that water user in order to obtain the protected instream flow. The water use plan would describe activities to modify or adjust water use or adjust water source or something like that in order to maintain the protected flows that have been established. The idea being that it is not any individual water users’ responsibility to maintain the protective flow but that all the water users collectively need to have a common plan for managing their water use and their conservation actions so that the protected flow at any point in the stream is maintained. The idea here is to make information about water use available so all the water users can see it so that opportunities can be found for efficiencies in sharing water and for efficiencies in using water in a way that is coordinated throughout the watershed. In parallel with that is the dam management plan which would be a similar dam owner by dam owner description of how the water flow from an impoundment is managed with the idea that dams can be operated to supplement flows during periods of low flow and to store water during periods of higher flow, and while each dam may have a primary use there may be some opportunities for multiple use here where the dam can be operated in concert with water conservation or water use modifications in order to maintain the protective flows. The water management plan document has individual pieces for each water user and for each dam owner would be the tool for discussions and negotiations and would ultimately result in a document which the affect water users and dam owners would sign on to and would then be adopted by the department. There are provisions in the rules for changing protected instream flows if new information becomes available or if there is a reason to change them, and also in changing the water management plan if water use needs or dam operation needs change as time goes on, and they certainly will as water users come and go or as water use increases or decreases.

Associated with the water management plan, the job of the contractor is to develop those plans for each individual water user and dam owner by interviewing whoever is appropriate in the water

user's organization. The dam owner's organization to find out that information, how do they use water, what are the opportunities for conservation. The contractor is expected to supply some technical expertise in conservation and water use issues work with dam owners and water users on that. The contractor is also to develop alternatives, and be responsible for costing out those alternatives and working with the individual water users and dam owners to select an alternative for each one that will meet the protected flow. They will then take that information and prepare a draft which will be presented to the committee, and ultimately to a public hearing, revised as a result of committee comments and as a result of public hearing comments and finally adopted by the department as a final document.

The two advisory committees, of which you are one, are the Technical Review Committee (TRC) whose focus is intended to be on technical aspects of identifying methods for establishing protective flows and reviewing the contractor's work for selecting a method and then applying that method to the particular reaches of the Souhegan River. The Water Management Planning Area Advisory Committee (WMPAAC), which is your committee, is intended to be basically a stakeholder group representing all the varied interests in the watershed that use water or own dams or are interested in water, to provide information to assist the contractor in developing the information both about the characteristics of the river and the protected uses, characteristics and resources, and to facilitate the interaction with the dam owners and water users and to review and comment on things from the perspective of your individual constituencies as the process goes forward. The Legislature provided that you should submit annual progress reports. Very often an early task is to help with the selection of a contractor.

We hope to have a contractor on board by this summer. Which means there is no time to waste. The selection process for contractor is that the TRC has selected two of their members to be on a selection committee and we are going to ask this committee to select two members today and meet on March 15 (after reviewing the Q&E packages that have already been submitted) to select a short list of contractors and then to subsequently participate in interviewing those contractors. The sequence would be, we select a short list, we then ask the short listed contractors, give them a detailed request for proposal, ask them to produce a detailed proposal, probably have a meeting with all short listed contractors to a question and answer session, and then receive proposals as fast as the contractors can reasonably put them together, conduct interviews and then select a contractor for contract negotiations. That will be the general process. The selection committee that will do this will be 2 members from TRC, 2 members from WMPAAC and 2 members from DES and then they will keep the committees informed as to what is going on.

We would like to do the on the stream study this season if possible which means that we have to have the contractor on board by early summer in order to get that. The protected flow study, the contractor would have a draft sometime next spring which would go through the public review process and so on. The **Legislature says we have to be done by December 31, 2008**, we think it will be fairly easy to be done somewhat before then, we actually hope to go as fast as we can to get it wrapped up so that we don't take any more contractor time, your time, than we need to in order to get the process done.

Any questions?

Robin Warren – These numbers of dams include the flood control dams?

Paul – Yes they do.

Robin – And there are about 12 of them.

Paul – I think so. The ones that DES owns, most of those DES dams are aquatic control dams.

Comment - I think there are 13 dams.

Paul – Everything that has a site number is a flood control dam.

Angela Rapp - who is in charge of implementing the Water Management Plan?

Paul – Good question. Basically the individual water users and dam owners are responsible for doing whatever it says in the plan they are supposed to do. The idea is that would be administered by DES basically through an audit process. We haven't thought about this in great detail, but once the plan is adopted, then it is the responsibility of water users and dam owners to do it and DES would conduct periodic audits of dam owners and water users to see if they are doing it or not. If they are not, we would work with them to do whatever has to be done to make it happen.

Tom O'Connell– Paul just a question for a couple of us who maybe have been out of the loop for awhile, I think I remember this but 7Q10, you had it up there, just tell me quick what it is.

Paul – 7Q10 is the low flow that occurs for a 7 day period on average every 10 years. It is a statistic that you can get from a daily hydrograph record. It is the one that is commonly used by EPA to set permit limits for NPDES discharges.

Peter de Bruyn Kops – Would DES be the party that would say okay the current flow is at this much and then contact all the people in watershed management plan?

Paul - I hope not. That remains to be worked out. How it would be determined, when particular actions need to be taken is something that is going to be part of the plan. One way to do it would be to use a series of gauges. We only have one on the Souhegan. We will figure that out as part of the water management plan. As an agency, I don't think we intend that DES would be the one responsible for notifying users, we would find a process where the information would be available to dam owners and water users so that they can take action just by looking at the information.

Question – Paul what is going to be the relationship between this committee and the contractor in terms of process and work to develop the actual plan?

Paul – What we would expect would be that there will be milestones that would define contractor deliverables along the way and that the committee basically will have the opportunity to review those defined deliverables and provide input to the contractor through DES. There will be a structured process so that your comments will get considered and responded to as a committee and that there will be milestone so that it won't be here is a finished deliverable, give us your comments. There will be opportunity for that along the way. When we have a draft, which will happen fairly shortly, of the scope-of-work which we need to develop for the request for proposal, we will make it available so you will be able to see those milestones.

We sent out a request for qualifications and we received 8 responses to that. So we have already done that.

Thank you for listening. I am anxious to turn this over to the newly elected Chairperson as soon as possible. I think that is the next task is to elect a chair and a vice chair. I will open the meeting for nominations.

Steve – Just to add to that since I know you are all ready to jump out for the chair and the vice chair. You will have DES staff support similar to other committees where Wayne Ives will be the point support person and will be able to get the materials out and work with the Chair and Vice Chair to develop the agendas as they see fit. Just to let you know that the Chair and Vice Chair are not going to have to run the committee by themselves. There is DES support for that.

Paul – You can remind us of that if you need to periodically during the process.

Election of Chair and Vice-Chair

Chair:

- **William Ruoff made a motion to nominate Pierce Rigrod as Chair, motion seconded.**

Paul - Are there any other nominations? No. Pierce will you accept the nomination?
Pierce Rigrod – Yes.

All in favor say aye, those opposed none, Pierce Rigrod unanimously elected Chair.

Paul turned the meeting over to Pierce Rigrod the newly elected chair.

Vice Chair:

- **Pierce – we need to make a nomination for a vice chair, any volunteers or nomination for a vice chair? Pierce made a motion to nominate Peter de Bruyn Kops as Vice Chair, motion seconded, all in favor say aye, none opposed, Peter de Bruyn Kops unanimously elected as Vice Chair.**

Other Business:

Contractor Selection Team Members (2)

Pierce – It is my understanding that members who are interested in reviewing the technical and planning aspects of the contractor, what they are going to do, proposals that come back from the request for proposals, these two people will be involved in reviewing those proposals and to make comments to DES regarding the proposals.

Paul – It won't be just comments, these people will be involved in a structured process for evaluating first of all for short listing four perspective contractors from amongst the qualifications received by a scoring process and then receiving proposals and interviewing short listed contractors and basically having a vote in making the decision as to what contractor we go forward with. This process for selection is a qualifications based process. Cost does not enter into the selection. Basically the path is to pick the most qualified consultant to do the work. The consultant knows right up front that we have \$355,000 to do the work. We expect all the tasks to be completed within that budget.

Pierce – Would anyone like to nominate someone for the contractor selection team?

Paul – The first meeting at which the short list will be selected will be March 15 at DES offices. That is fairly certain.

- **Pierce – Would anyone like to nominate someone or themselves to be on the contractor selection team.**
- **Gordon Leedy I will volunteer. Motion seconded by Angela Rapp all in favor say aye, all opposed none.**
- **George May nominated Tom Neforas, Tom Neforas volunteered, motion seconded, all in favor say aye, all opposed none.**
Pierce – Congratulations Gordon Leedy and Tom Neforas are the two elected members to the selection team.

Next Meeting

Pierce – Are we to set a date?

Paul – Yes, we would recommend that as soon as there is a short list we will have a request for proposals, but I am not sure that the committee needs to meet, we can distribute that.

Steve – I think that the best thing at this time would be to decide what day is the best for most, the day and time so that we can at least have a regular day and time established.

Pierce - Does everyone prefer this time of day or end of day? What is easier for the majority of people to make these meetings? Is it good to do after 5:00 pm or before 5:00 pm? When can most people make these meetings?

Paul – There are legislative members of the committee and when the legislature is in session they are available generally only Mondays and Fridays.

- **MEETING DAY AND TIME: All members liked Fridays at this time. Fridays afternoons is the best time for meetings.**

Pierce – So you are saying we don't need to establish an exact date at this stage for the next meeting?

Paul – I think not. We want is to have contractor output for you to review when we meet. It is going to be somewhat dependent on how fast the contractor goes. The two people you just selected will get the qualification packages and we will basically work to select a short list and interview them. I think when we have a selected contractor and as we are developing the contract probably would be a good time for the next meeting. Maybe even a joint meeting with the TRC. We would hope that we can do some joint meetings with the TRC where the same information would be presented to both groups. The next thing will be a discussion of the detailed scope of work and interaction with the prospective contractor once it has been selected.

Pierce – Are there any other questions?

Wayne Ives - Meeting place – Meetings will be open to the public, and in this case, the first meeting, we didn't advertise that. The next meeting we should hold in a bigger forum simply to take in to account that there may be any number of people showing up to attend, and it is a public forum so you are the official representatives but you also represent all the people who might have comments that they would speak to you in particular. So we are probably going to have to meet somewhere that has a slightly larger venue, and I don't know particularly where they might be and if you have suggestions that would help.

Comment: There are two larger rooms upstairs, if that would be of help.

- **Future meetings will be held in Milford (centrally located) in the Town Hall use auditorium as the sound is better and on a Friday afternoon. Set it up so everyone has a table, more of a working session, spread out and put papers out.**

Paul – Just one note, it is up to the Chair Person, we have had good luck with informal interactions, first of all encourage people to come if they are interested, and then, at the discretion of the Chair Person, involve them in the discussions.

Pierce – Any other comments or questions?

Comment – When I was on the school board there were public meeting law restrictions on conversations with other people on the school board outside of public meetings. Are there any rules that we have to follow?

Paul – I don't know.

Wayne – Probably the only thing is dealing with the contractors at this point.

- **Paul – We will ask the AG's office.**

Comment – One thing I learned on the Amherst School Board is that it helps to know what the rules are before you stick your foot in it.

Comment – You cannot conduct official business, and if you have, what represents a quorum in any kind of gathering, then that is technically illegal because if you have the quorum, you can feasibly call something to a vote and transact official business.

- **Paul** – I would guess that the Right-To-Know law applies to this group, but we will confirm that.

Motion to Adjourn, Angela seconded, all in favor, meeting adjourned.

Meeting Adjourned at 3:00 pm.